RECENT CASES.

ACCIDENT INSURANCE—CONSTRUCTION OF POLICY—EFFECT OF PRIOR ADJUDICATION—FIDELITY AND CASUALTY CO. v. LOWENSTEIN, 97 Fed. 17.—A provision in an insurance policy was as follows: "This insurance does not cover * * * injuries, fatal or otherwise, resulting from poison, or anything accidentally or otherwise taken, administered, absorbed or inhaled." The holder of this policy died from accidental inhaling of gas. Previous decisions had held that such a provision did not exempt the company from liability for death of person insured. *Held*, that the court would hold the same view regardless of what it might hold if the question was res integra. Sandborn J., dissenting.

The law is that where a provision in an insurance policy states that the company is relieved from liability for deaths from poison it refers only to cases where the poison is purposely taken, not to cases where it is accidentally taken. In the latter case the company is still held liable. *McGlother* v. *Provident Mutual Accid. Co.*, 60 U. S. Appl. 705. This view of the law seems to have been in the minds of the insurance company, and they had apparently made provision for it in the present case. It would seem, therefore, that the law, as we have laid it down, is not applicable. Its application is apparently confined to cases where the provision leaves it doubtful as to whether the insurance company desires to relieve itself from accidental poisoning, or from cases where poison is purposely taken. No such ambiguity occurs in the present case; but the court apparently takes no notice of this fact.

ANTI-TRUST LAW—POWER OF CONGRESS TO RESTRICT CONTRACTS IN RESTRAINT OF INTERSTATE COMMERCE—ADDYSTON PIPE AND STEEL CO. v. U. S., 20 Sup. Ct. Rep. 96.—A combination of cast-iron pipe concerns to regulate the bidding for contracts for sale in various States of the Union of pipe to be manufactured by the successful bidder is in violation of the anti-trust law. Congress has power to legislate against such contracts. See COMMENT. p. 170.

COMMON CARRIERS—BILL OF LADING—HUTKOFF v. PENNSYLVANIA R. R. CO., 61 N. Y. Sup. 254.—A provision in a bill of lading that the carrier shall not be liable for any loss or breakage does not exempt the carrier from the consequences of its own negligence.

Contrary to the general rule the New York courts allow a common carrier, by special contract, to stipulate for exemption from liability even for losses resulting from its own negligence. *Perkins* v. *Hudson River R. Co.*, 24 N. Y. 196, 82 Am. Dec. 282; *Nicholas* v. *New York Central, etc., R. R. Co.*, 89 N. Y. 370. Such contracts are not favored, however, and in order to have such an effect must be plainly and distinctly expressed, so that they cannot be misunderstood by the shipper. *Maguire* v. *Dinsmore*, 56 N. Y. 168. Every matter of doubt under such a contract will be solved in favor of the shipper, and where general words limiting the liability of the carrier may be given a reasonable meaning without making them include losses caused by the negligence of the carrier, they will not be construed as granting an exception from such liability. *Rathbone* v. *N. Y. C. R. R. Co.*, 140 N. Y. 48; *Kenney* v. *N. Y. C. R. R. Co.*, 125 N. Y. 422. In the present case the phrase "any loss or breakage" is a general one, and the court construes it according to the rule just mentioned. *Special express provision* against liability for negligence is the only means by which the carrier can avoid such liability. *Nicholas* v. *N. Y. C. R. R. Co.*, 89 N. Y. 370.

COMMON CARRIERS—CONTRACTS LIMITING LIABILITY—NEGLIGENCE—MARQUIS ET AL. v. WOOD, 61 N. Y. Sup. 251.—A contract for the transportation of

goods, stipulating that the carrier shall not be liable for any damage in excess of a specified amount, does not, by the attempt to limit the carrier's liability, relieve it from liability for a loss occasioned by its negligence.

Carriers and shippers may agree upon a certain valuation for property when it is delivered for transportation. Such an agreement is binding, however the loss may be caused, provided it gives the bona fide value of the goods fixed by consent of both parties. *Hart* v. *P. R. R. Co.*, 112 U. S. 331; *Graves* v. *Lake Shore R. R. Co.*, 137 Mass. 33.

Where, however, the loss is caused by the carrier's negligence, and the stipulation limiting the amount of the carrier's liability fixes an arbitrary value printed in all bills of lading, and concerning the fairness of which the shipper has not been questioned, such stipulation is generally invalid. Encyl. of Law V, 133.

In most States where a carrier is not allowed to stipulate for total exemption from liability for a loss caused by its negligence, a stipulation *limiting* its liability for such loss would also doubtless be held void. *Chicago Ry. Co.* v. *Chapman*, 133 Ill. 96; *Muller* v. *P. R. R. Co.*, 134 Pa. 310. But in *Richmond, etc., R. R. Co.* v. *Payne*, 86 Va. 48, it was held that a carrier might by contract *limit* its liability for loss caused by its negligence, though it could not *exempt itself wholly.*

In New York, where carriers can exempt themselves from all liability for negligence, they certainly can also limit the amount recoverable for negligence. *Belger* v. *Dinsmore*, 51 N. Y. 166. They must, however, expressly state that the limitation or liability is to cover losses by negligence. No general term like "any damage," as used in the present case, will be sufficient; 89 N. Y. 370.

COMMON CARRIERS—JUDICIAL NOTICE—CUSTOM—MCKIBBIN ET AL. V. GREAT NORTHERN RY. CO., 80 N. W. 1052 (Minn.).—In this case the court took judicial notice of a general custom in regard to baggage operating in favor of the plaintiff. It, however, required him to show that the general custom controlled in the particular case, by proving affirmatively that there were no special conditions or limitations imposed upon it by the defendant railroad company in its dealings with him.

This requirement is criticized in a dissenting opinion, which says: "If the conditions and limitations referred to are a part of the general custom, we should take judicial notice of them also. If they are not a part of such general custom, but are restrictions placed on the general custom by the particular railroad company, then the burden was on it to plead and prove the particular limitation or condition so placed by it on the carrying of sample cases."

The court having taken judicial notice of a general custom apparently establishing the plaintiff's case, the burden would then appear to be on the defendant to show any exceptions to the general custom in its favor.

CORPORATIONS — EMPLOYES — WAGES — CONSTITUTIONALITY OF STATUTE — STATE V. HAUN, 59 Pac. 340. (Kan.).—Statute of 1897, I. Chapter 145, provides that it shall be unlawful for any person, firm, company, corporation or agent thereof, to pay any employé any wages except in lawful money or by check or draft. Section second of the act provides that any other mode of payment is void and shall be construed as coercion. By section four the act is made to apply only to corporations or "trusts" or their agents that employ ten or more persons. *Held*, that the act is unconstitutional and void, in that it violates the Fourteenth Amendment to the Constitution of the United States, which provides that it shall not deny to any person within its jurisdiction the equal protection of the laws.

That injustice would result from the enforcement of such an act must be obvious, for by its provision it is not unlawful for any person excepting a corporation which employs ten or more persons to coerce an employé. The point is made that "the same act of the same man would be unlawful to-day if his employer was a corporation or trust and employed ten men, while to-morrow